

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES EDWARD NALLS,

Plaintiff,

13cv0031

ELECTRONICALLY FILED

v.

COMMONWEALTH OF PENNSYLVANIA,
THE ATTORNEY GENERAL OF THE
STATE OF PENNSYLVANIA,

Defendants.

**ORDER OF COURT RE: PRO SE PETITIONER'S OBJECTIONS TO REPORT AND
RECOMMENDATION (DOC. NO. 21)**

On January 7, 2013, Pro Se Petitioner filed a Petition for Habeas Corpus. Doc. No. 1-1. Petitioner seeks relief from his 2008 conviction for murder of the third degree. He is currently serving a sentence of imprisonment of not less than 20 years nor more than 40 years, with credit for time served. The case was presided over by this Court and referred to United States Magistrate Judge Cynthia Reed Eddy. 4/11/2013 Order. Petitioner alleged that he was denied due process/a fair trial because: (1) the defense could not introduce an expert on accidental firearm discharge; (2) inadmissible hearsay was admitted; (3) the verdict was not supported by sufficient evidence; and (4) trial counsel failed to object to the trial court's refusal to give jury instructions on voluntary manslaughter and/or homicide. Doc. No. 1-1. Petitioner also contended that he was sentenced to 10 to 20 years imprisonment, not 20 to 40 years imprisonment. Petitioner's conviction and sentence have been consistently upheld on the merits by appellate Courts of the Commonwealth of Pennsylvania.

On February 12, 2014, Judge Eddy issued a Report and Recommendation in which she recommended that the Petition for Writ of Habeas Corpus be denied. Doc. No. 17. Judge Eddy found that four of Petitioner's claims are not reviewable under section 2254 because of Petitioner's failure to raise the issues as federal constitutional claims in state court. Doc. No. 17, 21. However, Judge Eddy addressed the substance of each of Petitioner's grounds for relief and rejected each one on the merits. Doc. No. 17. Objections were due by March 3, 2014. Hearing no objections, on March 6, 2014, this Court entered an Order adopting the Report and Recommendation as the Opinion of this Court. Doc. No. 18. The Clerk of Court was ordered to mark the case closed. A copy of the Order was mailed to Pro Se Petitioner the same day.

On March 25, 2014, Petitioner filed a Motion for Leave to File Objections to Report and Recommendation. Doc. No. 19. Petitioner contended that he did not receive a copy of Judge Eddy's Report and Recommendation and was only aware of its existence when he received this Court's Order adopting the Report and Recommendation. Id. This Court granted Petitioner's Motion and granted him leave to file a Motion for Reconsideration including all objections to the Report and Recommendation on or before April 17, 2014. Doc. No. 20. Presently before this Court is Petitioner's timely Objections to the Report and Recommendation. Doc. No. 21. Petitioner contends that this Court erred in denying the Petition for Writ of Habeas Corpus or, in the alternative, erred by failing to grant an evidentiary hearing. Id.

In his 57 page objections to the Report and Recommendation, Petitioner recounts the background of his case and conviction and outlines his position on the grounds raised in his Petition for Writ of Habeas Corpus. Doc. No. 21. Petitioner again moves this Court to vacate his sentence of 20-40 years imprisonment and institute a sentence of 10-20 years imprisonment. Doc. No. 21, 52. This Court declines to do so for the reasons set forth in Judge Eddy's Report

and Recommendation. Doc. No. 17, 25. The Court also notes that Petitioner seemingly acknowledges that he “received a sentence of 20-40 years imprisonment.” Doc. No. 21, 52, 54 (“The sentencing court gave [P]etitioner the statutory maximum of 20-40 years . . . ”) (“A sentence in the middle of the sentencing range such as 10-20 years imprisonment would have been more appropriate”). In sum, Petitioner has not raised any new issues of law or fact in his Objections that causes this Court to reconsider its Order adopting Judge Eddy’s Report and Recommendation. Therefore, the following Order is entered:

AND NOW, this 22nd day of April, 2014, IT IS HEREBY ORDERED THAT Pro Se Plaintiff’s Objections to the Report and Recommendation (Doc. No. 17) are **DENIED**. Judge Eddy’s Report and Recommendation (Doc. No. 17) continues to be the Opinion of this Court. This case **REMAINS CLOSED**.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All counsel of record

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